IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.87 OF 2003
IN
SUIT NO.63 OF 2003

Metalight Productions
Pvt. Ltd. ..Plaintiffs.

Vs.

Indian Motion Pictures
Distributors' Association
& Ors. ..Defendants.

Ms.Nivedita Sharma i/b.Mr.A.J.Alex for the Plaintiffs.

Mr.Rajiv Narula i/b.M/s.J.Narula & Associates for Defendant No.1.

Mr.A.Y.Bookwala i/b.M/s.Desai & Desai for Defendant No.2.

CORAM : S.J. VAZIFDAR, J.
DATED : 1ST DECEMBER, 2005

P.C. :

The suit as originally filed is for a declaration that the Plaintiffs are not liable to pay the claim of Defendant No.2 that it may have against Defendant No.3; that Rule 18 of the rules and regulations of Defendant No.1 is not attracted against the Plaintiffs; for a permanent injunction directing Defendant No.1 to register a film "Satta", produced by the Plaintiffs.

2. The Plaintiffs amended the plaint for a declaration that the order dated 3.1.2003 passed by Defendant No.1 is bad in law and illegal and for a declaration that Rule 18 is illegal, bad in law and against public policy as being violative of section 27 of the Indian Contract Act.

3. The Plaintiff is the producer of a film "Satta". The Plaintiffs sought registration of the said film with Defendant No.1. By the impugned order dated 3.1.2003 Respondent No.1 declined to register the film. I shall revert to this order shortly. It is necessary at this stage to refer to the said Rule 18 in accordance with which the said order is passed. The same reads as under :

"18. No application for registration of a picture shall be accepted

Bar on acquisition of pictures from producers, agents or parties against whom claims / complaints/disputes may be pending.	by the Sub-Committee from any member or applicant unless the outstanding complaints / claims, if any, of any member/s previously lodged with the Association against-
	the producer of the picture in question.
	the producer in respect of any other picture previously produced by him ;

the producer in respect of any of his pictures which may be under production ;

or

any other person connected directly or indirectly with the picture in question or any other picture mentioned in Clause (ii) and (iii) above in the capacity of artist, Director, Music Director, Cameraman, Editor etc.

have been duly and satisfactorily settled and a 'No Objection Certificate' from the claimant/s concerned is produced for the record of the Association."

4. Ms.Sharma, the learned counsel appearing on behalf of the Plaintiff contended that Rule 18 is bad in law, illegal and not binding on the Plaintiff.

5. At the ad-interim stage, R.J. Kochar, J. (as His Lordship then was) by an order dated 16.1.2003 held that the members of Defendant No.1 were bound by the rules which are framed and that the Courts have no jurisdiction to interfere with the internal arrangement of Defendant No.1. His Lordship considered himself bound by two earlier unreported

judgments of this Court in Notice of Motion No.3251 of 1991 in Suit No.3400 of 1991, (S.M.Jhunjhunwala, J. (as His Lordship then was) dated January 22, 1992) and in Notice of Motion No.3069 of 1994 in Suit No.4863 of 1994 (Smt. K.K.Baam, J. (as Her Ladyship then was) dated March 3, 1995).

6. Being aggrieved by the judgment, the Plaintiff filed an Appeal. In Appeal, the Division Bench (to which I was a party) disposed of the Appeal by an order dated 24.1.2003 in terms of the minutes of order tendered by the parties. The Plaintiff agreed to furnish a bank guarantee in the sum of Rs.30,00,000/-. It was agreed that on such guarantee being furnished, Respondent No.1 would not refuse registration of the film.

7. Pursuant to the said order, the Plaintiff furnished the bank guarantee of Rs.30,00,000/-. Accordingly, Defendant No.1 registered the film. The film has now been exploited in the usual manner.

8. To grant the interim reliefs today would in fact amount to decreeing the suit, leaving the Defendants unsecured.

9. I am in respectful agreement with the observations of R.J. Kochar, J. that the said unreported judgments are binding so far as the validity of Rule 18 is concerned.

10. In the facts and circumstances of this case, I am not inclined to allow the Plaintiff to have the guarantee discharged for another reason.

It is possible that on a true and proper interpretation of Rule 18 and/or reading Rule 18 down, it could be construed to include a party seeking registration against whom the claim has been filed (in this case the Plaintiff) if there is a real and apparent connection between such party and the defaulting party. In this case, therefore, the question that would arise is whether the Plaintiff and Defendant No.3 are in substance and in reality, connected with each other so as to bring into operation, Rule 18. I am unable to pursuade myself, that even after the rule is so construed or read down, it must be declared to be void as being violative of section 27 of the Contract Act. This is a question which must await the trial.

11. I have refrained from deciding this point at

this stage as, in any event, I consider myself bound by the above judgments.

12. From the record, it cannot be said that the impugned order passed by Defendant No.1 is ex-facie unsustainable. In the said order, Defendant No.1 has come to the finding after hearing the parties that one Sudesh Iyer at the relevant time had an interest in both the Plaintiff and Defendant No.3. It is for non-payment of the dues of Defendant No.2 by Defendant No.3 that registration of the Plaintiff's film was refused.

13. Prima-facie, to put the Defendant's case at its lowest, the material does not disclose that such a view is unsustainable. Indeed, the record suggests that Sudesh Iyer and his wife had a substantial and controlling interest at the relevant time in the Plaintiff and with Defendant No.3. For instance, Sudesh Iyer holds 50% of the subscribed and paid-up capital of the Plaintiff. He also holds 33% of the subscribed and paid-up capital of Defendant No.3. His share-holding in Defendant No.3 is equal to two other major share holders. He subscribed to the Memorandum of Association of both the companies. At the relevant time, his wife was also a Director of

the company. The fact that their share-holding may have been transferred or that they may have resigned as Directors of either of the companies, would make no difference.

14. To say the least, therefore, these facts indicate that there is something to go to trial. The balance of convenience therefore is clearly in favour of the bank guarantee being ordered to be continued.

15. The bank guarantee is directed to be kept alive till the hearing and final disposal of the suit and for a period of 12 weeks thereafter.

16. Notice of Motion is accordingly disposed of. The costs to be costs in the cause.